

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 18395 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE A.S.DAVE**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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KAMLESH CHHAGANBHAI VASANI - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE**Date : 11/10/2005****ORAL JUDGMENT**

1. In this petition, under Article 226 of the Constitution of India the order dated 4/8/2005 passed by

Commissioner of Police, Rajkot City is challenged, whereby the detenu is detained as dangerous persons as defined under Section 2(c) of the Act, in exercise of power under Sub-Section 2 and Section 3 of the Act as violative of Article 14, 19, 21 and 22 of the Constitution of India.

2. The grounds supplied along with the order of detention on 4/8/2005 reveal, registration of about six C.R. at various police station in the city of Rajkot for the offence punishable under Section 379 and 380 of the Indian Penal Code and in all the cases it is mentioned that the investigation is on. The grounds further reflected recording of statements of two witnesses dated 1/8/2005, which narrate about the incident dated 2/6/2005 and 14/5/2005 mentioning about illegal activities of the detenu indulging into illegal sale and purchase of two wheelers and also threatening the witness and other members of the public and creating an atmosphere of disruption of public order. The detaining authority has also considered other remedies under ordinary law and found the same to be inadequate and, therefore, the order of detention came to be passed.

3. Learned advocate for the petitioner has submitted that the registration of crime against the detenu in various police station in the city of Rajkot, by itself do not constitute any ingredient, which may attract provisions of the PASA as defined under Section 2(c) of the Act. In support of arguments, she has relied on the decision reported in **AIR 2003 SC 971 in case of Darpan Kumar Sharma alias Dharjan Kumar Sharma vs. State of Tamil Nadu and Ors.** submitted that offences under Section 379 of Indian Penal Code by itself having no bearing of disturbance of public order. It was further submitted that there is no material on record to show that the reach and potentiality of the incident as narrated lead to disturbance of even tempo of public life of the community in the locality or normal life of the community which disturb general peace and tranquility, which create alarm or insecurity in the mind of the public at large. Reliance is also placed on another decision as reported in 1995 (2) GLR 1268 that the activity must be such that disturb the public order.

4. On the other hand Mrs. Hansa Punani learned AGP has supported the impugned action of the respondent authority and submitted that no interference is called for by this

Court in exercise of power under Article 226 of the Constitution of India.

5. Considering the facts of this case, submissions of learned advocates for the parties and on perusal of record, I find force in submission of learned advocate for the petitioner and in the present case the registration of crimes and statements of two witnesses narrating about some incident of illegal activities of the detenu, there is no other credible materials which can link such prejudicial and illegal activities of the detenu with the maintenance of public order. It is pertinent to note that the Division Bench of this Court in the decision dated 3/3/1993 in Special Civil Application No. 1681/92 after considering the ratio laid down in **Mrs. Harpreet Kaur Harvinder Singh Bedi vs. State of Maharashtra & Anr. reported in AIR 1992 SC 979** found, in the similar facts of the case that theft of house hold commodities by the detenu and registration of various offences under Section 379 of IPC, do not by itself lead to disturbance of public order. In view of the above, I am of the agreement that the above view of the Division Bench of this Court and find the order of detention dated 4/8/2005 is illegal and the same is quashed and set

aside. The detenu, Kamlesh Chhaganbhai Vasani is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct Service is permitted.

(Anant S. Dave, J.)

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